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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,998	01/22/2004	Rebecca M. Minard	49339-C	6201

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1615

MAIL DATE	DELIVERY MODE
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06/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/762,998	Applicant(s) MINARD ET AL.	
	Examiner NEIL LEVY	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 128-179 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 128-179 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 128-179 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Some of the claims (129, for example) are to DISTINCT FEED MATERIALS; it is unclear what is intended as the meets & bounds of this constraint. Applicant separates feed, from vitamins, minerals, chemical entities –etc. . Distinct could mean each compartment or section differs from the other(s) or that vitamins are separate from feed – one section having only vitamin, another only feed (which we would interpret to include vitamins, minerals, etc.). As it stands, each container may have multiple sections, each containing the same components in more or less the same amounts &/or ratios.

Claim 150 recites corresponding to the specified dog- 147 already requires selection for a specified dog- we fail to see a further limitation.

Claim 174 seems to also not limit 165.

Claims 128- 144, 147 –162, 165 –175,178 & 179 stand rejected under 35 U.S.C.

102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over GB1474931, with a teaching by MERCK '67 .

The rejection of record is maintained over re-written new claims, seen as corresponding to claims 76- 127, but limited to a specified dog (or dogs?) , & extended for the following reasons; (P.2, lines 1-6), the weight of the feed components for each section is in fact known, thus precise, & not outside of the error associated with weighing: by one in the feed & nutritional ads (P2, lines 21-27), contrary to applicant's arguments for unstated variation . Also, see P. 1, lines 30 – 34; the offal is cooked, iif desired. & (p.2, lines 15-18) STORED IN HOME REFRIGERATORS ! -- clearly so done to feed pets, dogs or cats; not other animals fed in homes, in Germany in the '70s, offal , even if unstated. Merck is cited to show offal is a normal Dog feed (bottom of p. 1348).

Claims 128- 144, 147 –162, 165 –175,178 & 179 stand rejected under 35 U.S.C.. 103(a) as being unpatentable over GB1474931, with a teaching by MERCK '67 and in view of Matsuura et al EP 0609056

GB (above & of record) provides the instant invention, but does not explicitly use the terms "specified dog". Matsuura, in providing prescription diets, for dogs, does show only 1 dog, a particular dog, is shown to have a particular diet provided for it- see Experimental example 1; diets were prepared for each of 3 dogs/group, based on dogs weight[0022- 0025].

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The feed materials, vitamins, amino acids, chemical entities, feeds, can be mixed with feeds, or provided as powders, granules as distinct components ([0019] & fed in aliquots/day [0020], although Matsuura neglects to put the aliquots in any container. GB does, providing convenience. Matsuura also points to the need for greater precision, on its face, than applicant's < 15% variation- see , for example [0042]- 0.1 g/ 1kg body weight is provided for once/day.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a feed additives for a dog, to use any of art recognized forms, as exemplified by Matsuura, & to put the additives in a package, such as that of GB, compartmentalized, so as to permit of multiple daily dosing, or dosage presentation over a multiple of days.

Claims 145, 146, 163, 164, 176, 177 are rejected under 35 U.S.C. 103(a) as being obvious over GB – 1474931 and Magnant et al- 5787839 and Pedigree as a teaching reference, & further in view of Merck '67 .

GB- (above) provides the instant claimed methods of administering specified amounts of specified feeds & feed components to specified animals, but does not describe a rigid containerization system. MAGNANT (of record) does (fig. 4, 9, col3, top).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a container for feed, to use any of art recognized

means, as of GB , Magnant. Motivation to use a specific container is shown by Magnant, for travel and exact ratios and amounts of feeds are within the purview of one in the art to attain, in order to optimize desired effects, such as control of specific nutritional needs, amount of feed depending on size, age, sex, & desires of the target. This is shown by Merck; elements of feed are known within 5% or their nutrient contents on p. 1349, water & fat; on p. 1350, more precise nutrient requirements are identified , & for a given dog weight, a balanced feed is shown to be determined. Failure to comply is addressed , for example at p. 54, obesity. Pedigree shows dog feed components, here "bones" is accurately weighed- 2 ounces.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular pet of interest, desired nutrient component concentration, flavor &, cost consideration, with consideration of ingredient compatibility.

There is no non obvious and/or unexpected results obtained since the prior art is well aware of the use of feed for control of health and the use of nutrients & amounts thereof for the functionality for which they are known to be used is not a basis for patentability.

Applicant's arguments filed 3/8/07 have been fully considered but they are not persuasive. Applicant's arguments addressed above are to the effect that claim language of selecting for a specified dog, % variation, absence of dog identification as eater in GB warrants withdrawal of rejections. As shown above, dogs are at least one of the GB species to which the feed packaging apply, & putting the feeds in a rigid carrier is an obvious activity for one to do-frozen packages would remain viable for some time, and this form is not precluded- in fact it wasn't considered- in the instant specification. Finally, examiner finds no patentable basis in this art for 15% or less , feed weight variation; precise weights to provide enhanced nutrition are evident as shown by Merck, & feeding too much would result in a fat dog; too little, perhaps a missing heart or liver from the cooks table.

As to the opinion & demonstrated need declaration,; we don't agree that this method is previously unknown, & advantageous packaging may be desirable, & by applicant's, feasible as to profitability, but we don't see the methods as claimed as unobvious.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN PAGE can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NEIL LEVY
Primary Examiner
Art Unit 1615
